UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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RAZVAN HOTARANU and LUIS FELIX,
Individually and On Behalf of All Others
Similarly Situated,

Plaintiffs,

-against-

STAR NISSAN INC., JOHN KOUFAKIS SR.,
JOHN KOUFAKIS JR., STEVEN KOUFAKIS,
and MICHAEL KOUFAKIS,

Defendants.
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MEMORANDUM
AND ORDER

16 CV 5320 (KAM) (RML)

LEVY, United States Magistrate Judge:

Plaintiffs Razvan Hotaranu and Luis Felix ("plaintiffs") commenced this wage and hour action individually and on behalf of all others similarly situated on September 26, 2016 against defendants Star Nissan Inc., John Koufakis Sr., John Koufakis Jr., Steven Koufakis, and Michael Koufakis ("defendants"). (See Complaint, dated Sept. 26, 2016 ("Compl.").) Now before the court is plaintiffs' motion for: (1) conditional certification of the action as a collective action pursuant to 29 U.S.C. § 216(b); (2) court-authorized notice of the Fair Labor Standards Act ("FLSA") claim to all potential opt-in plaintiffs; (3) approval of the proposed notice of collective action and consent to join form; and (4) expedited discovery of names and contact information for all potential opt-in plaintiffs. (See Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Certification, dated Feb. 14, 2017 ("Pls.' Mem."), at 1; see also Reply in Support of Plaintiffs' Motion for Preliminary Certification, dated Mar. 7, 2017 ("Reply").) Defendants have submitted an opposition. (See Memorandum of Law in Opposition to Plaintiffs' Motion for Preliminary Certification, dated Feb. 28, 2017 ("Defs.' Mem.").) For the reasons explained below, plaintiffs' motion is granted, subject to the limitations contained herein.

BACKGROUND AND FACTS

Plaintiffs assert claims pursuant to, inter alia, the FLSA, 29 U.S.C. §§ 201, et seq., and New York Labor Law. (See Compl. ¶¶ 134-186.) Pertinent to this motion, plaintiffs bring a claim under section 206 of the FLSA for defendants' alleged failure to pay minimum wages to auto sales representatives who were paid a flat weekly rate plus commissions. (See id. ¶¶ 134-141.)

As set forth in the complaint, plaintiffs allege that, during the relevant time period, they were jointly employed by defendants as auto sales representatives at the Star Nissan dealership, located at 206-02 Northern Boulevard, Bayside, New York. (See id. ¶¶ 18, 23, 27; Pls.' Mem. at 1.) Plaintiffs allege that defendants' sales representatives are paid pursuant to a commission agreement, plus a flat rate of $100 per week, regardless of hours worked. (See Compl. ¶ 6; Declaration of Luis Felix, dated Feb. 6, 2017 ("Felix Decl."), annexed as Ex. B. to Declaration of Joseph A. Fitapelli, Esq., dated Feb. 14, 2017 ("Fitapelli Decl."), ¶ 5; Declaration of Razvan Hotaranu, dated Feb. 6, 2017 ("Hotaranu Decl."), annexed as Ex. C to Fitapelli Decl., ¶ 5.) Plaintiffs further allege that, although they worked more than forty hours per week, in "many" instances sales representatives earned no commissions during a given pay period, or did not earn enough commissions to satisfy the applicable minimum wage. (See Compl. ¶ 6; Felix Decl. ¶¶ 4, 6-7; Hotaranu Decl. ¶¶ 4, 6.)

This motion was fully briefed as of March 7, 2017. As of that date, plaintiffs had submitted consent to join forms from opt-in plaintiffs Gabriel R. Rodriguez, Kenneth Livingston, and Lucas Cedeno.[1] (See Consents, filed Sept. 26, 2016.)

DISCUSSION

1. Legal Standard

29 U.S.C. § 216(b) provides, in pertinent part:

> [a]ny employer who violates the provisions of section 206 or 207 of this title shall be liable to the employee or employees in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional amount as liquidated damages. . . . An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.

29 U.S.C. § 216(b). Thus, section 216(b) provides a private right of action to an employee to recover unpaid minimum wages and/or overtime compensation from an employer who violates the Act's provisions, and permits such an action to be brought as a collective action. Id.; see Gortat v. Capala Bros., Inc., No. 07 CV 3629, 2009 WL 3347091, at *8 (E.D.N.Y. Oct. 16, 2009). Section 216(b) "requires that employees affirmatively opt-in to an FLSA collective action by filing a written consent." Young v. Cty. of Nassau, No. 09 CV 3830, 2010 WL 161593, at *1 (E.D.N.Y. Jan. 13, 2010) (collecting cases).

Courts employ a two-step process in certifying a collective action under the FLSA. In the first step of this inquiry,

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[1] During the pendency of this motion, plaintiffs submitted three additional consent to join forms. (See Consents, filed Apr. 5 & Apr. 6, 2017.)

> the court examines pleadings and affidavits to determine whether the proposed class members are similarly situated. At the initial assessment stage, before discovery is completed, the court does not resolve factual disputes, decide substantive issues going to the ultimate merits, or make credibility determinations.

Flores v. Five Star Carting, LLC, No. 14 CV 2970, 2015 WL 6625899, at *2 (E.D.N.Y. Oct. 30, 2015) (citation omitted); see also Summa v. Hofstra Univ., 715 F. Supp. 2d 378, 384-85 (E.D.N.Y. 2010). "Importantly, the determination that potential plaintiffs are similarly situated is merely a preliminary one." Bifulco v. Mortg. Zone, Inc., 262 F.R.D. 209, 212 (E.D.N.Y. 2009). Indeed, the first stage of this process, although referred to as "certification," is "merely the exercise of the discretionary power to send out notice to the potential 'opt-ins.'" Harper v. Gov't Emps. Ins. Co., 826 F. Supp. 2d 454, 457 (E.D.N.Y. 2011) (citing Myers v. Hertz Corp., 624 F.3d 537, 555 n.10 (2d Cir. 2010)).

Neither the FLSA nor its implementing regulations define "similarly situated." Hoffman v. Sbarro, Inc., 982 F. Supp. 249, 261 (S.D.N.Y. 1997). In this circuit, "courts have held that plaintiffs can meet this burden by making a modest factual showing sufficient to demonstrate that they and potential plaintiffs together were victims of a common policy or plan that violated the law." Id.; see also Bifulco, 262 F.R.D. at 212. Notably, "a named plaintiff in a collective action need not demonstrate other facts-numerosity, commonality, typicality, and adequacy of representation-which are required to bring a class action" under FED. R. CIV. P. 23. Sexton v. Franklin First Fin., Ltd., No. 08 CV 4950, 2009 WL 1706535, at *4 (E.D.N.Y. June 16, 2009).

The second step of the inquiry generally occurs after the completion of discovery; "at that point, the court makes a factual finding based on the developed record as to whether or not the class members are actually 'similarly situated."' Bifulco, 262 F.R.D. at 212. At the second stage, courts consider: "(1) disparate factual and employment settings of individual plaintiffs; (2) the various defenses available to defendant which appear to be individual to each plaintiff; [and] (3) fairness and procedural considerations." Jason v. Falcon Data Com, Inc., No. 09 CV 3990, 2011 WL 2837488, at *4 (E.D.N.Y. July 18, 2011) (internal quotation marks and citation omitted). If discovery reveals that the plaintiffs are not similarly situated, then "the court will decertify the class, the claims of the opt-in plaintiffs will be dismissed without prejudice, and the class representatives may proceed to trial on their individual claims." Rubery v. Buth-Na-Bodhaige, Inc., 569 F. Supp. 2d 334, 336 n.1 (W.D.N.Y. Aug. 8, 2008).

At this initial preliminary certification stage, however, plaintiffs' burden "is minimal, and generally courts in this circuit 'require nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy or plan.'" Sobczak v. AWL Indus., 540 F. Supp. 2d 354, 362 (E.D.N.Y. 2007) (quoting Harrington v. Educ. Mgmt. Corp., No. 02 CV 787, 2002 WL 1009463, at *2 (S.D.N.Y. May 17, 2002)); see also Myers, 624 F.3d at 555 (explaining that at the conditional certification stage only "a low standard of proof" is required "because the purpose of this first stage is merely to determine whether 'similarly situated' plaintiffs do in fact exist"); Gayle v. Harry's Nurses Registry, Inc., No. 07 CV 4672, 2009 WL 605790, at *10 (E.D.N.Y. Mar. 9, 2009) ("This first review is merely a preliminary finding, and does not require a determination that the persons being notified are, in fact, similarly situated to the plaintiff. After discovery, the Court reviews the collective action certification more rigorously at which point it may decertify the collective action if it determines that the plaintiffs are not similarly situated.") (internal quotation marks and citations omitted). "Courts do not require a named plaintiff to show an actual FLSA violation, but rather that a 'factual nexus' exists between the plaintiff's situation and the situation of other potential plaintiffs." Sobczak, 520 F. Supp. 2d at 362.

2. Analysis

A. Conditional Certification

Plaintiffs seek conditional certification of a collective consisting of all sales representatives who work or have worked at defendants' Star Nissan dealership since July 12, 2013. (See Pls.' Mem. at 8.) Having reviewed the pleadings and evidentiary submissions, I find that plaintiffs have satisfied their modest burden of demonstrating that defendants' sales representatives were subjected to a common policy that allegedly deprived them of minimum wages. Plaintiffs have submitted declarations of named plaintiffs Felix and Hotaranu, as well as opt-in plaintiffs Rodriguez and Cedeno, evidencing defendants' common policy of paying auto sales representatives a flat weekly rate of $100, plus commissions earned, regardless of hours worked, and asserting that, at least during certain pay periods, they did not earn commissions and thus did not receive the applicable minimum wage. (See Felix Decl. ¶¶ 5-6; Hotaranu Decl. ¶¶ 5-6; Declaration of Gabriel Rodriguez, dated Feb. 6, 2017 ("Rodriguez Decl."), annexed to Fitapelli Decl. as Ex. D, ¶¶ 5-6; Declaration of Lucas Cedeno, dated Feb. 6, 2017 ("Cedeno Decl."), annexed to Fitapelli Decl. as Ex. E, ¶¶ 5-6.) Three of the four declarants also assert that they recall certain pay periods when they earned only small commissions that they think were insufficient to constitute minimum wage. (See Felix Decl. ¶ 7; Rodriguez Decl. ¶ 7; Cedeno Decl. ¶ 7.) Additionally, plaintiffs' declarations include the full names of seven other sales representatives who they assert "were paid a flat weekly rate" and plaintiffs further assert that defendants never notified them of their entitlement to the applicable minimum wage for all hours worked.[2] (See Felix Decl. ¶¶ 8-9; Hotaranu Decl. ¶¶ 7-8; Rodriguez Decl. ¶¶ 8-9; Cedeno Decl. ¶¶ 8-9.)

Plaintiffs have also submitted evidence in the form of paystubs for Rodriguez, Hotaranu, and Felix. (See Paystubs, filed Feb. 14, 2017 ("Paystubs"), annexed as Ex. F to Fitapelli Decl.) Taking opt-in plaintiff Rodriguez's paystubs as an example, the paystubs indicate that, while he has asserted that he worked forty-five to fifty hours per week throughout his employment, he was only paid $277.64 for the pay period October 12, 2013 to October 18, 2013. (See id. at 2; Rodriguez Decl. ¶ 4.) This amount represents a flat weekly rate of $150 plus $127.64 in commissions. (Paystubs at 2.) Assuming a forty-five hour workweek, this equates to less than the applicable minimum wage during the relevant time period.[3] Similarly, a second paystub indicates that for the pay period January 11, 2014 to January 17, 2014, Rodriguez was paid $200, consisting of a flat weekly rate of $100 plus a $100 commission.

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[2] Defendants contend that plaintiffs' declarations are inadequate because, inter alia, identifying other sales representatives who "were paid a flat weekly rate" does not indicate that those employees were not paid the applicable minimum wage when accounting for commissions earned. (See Defs.' Mem. at 8-9.) At this preliminary stage of the action, taking into account the pleadings, declarations, and other evidence submitted, I am satisfied that plaintiffs have met their minimal burden of demonstrating the existence of some similarly situated employees who were subjected to defendants' common pay practice. See Colon v. Major Perry St. Corp., No. 12 CV 3788, 2013 WL 3328223, at *6 (S.D.N.Y. July 2, 2013) (explaining that "it is beyond dispute that courts regularly determine that two or three declarations corroborating each other constitute a sufficient amount of evidence to conditionally certify a collective action"). In the event that other sales representatives opt into the action, the parties will have the opportunity to conduct discovery to determine whether minimum wage violations occurred. Further, I have reviewed defendants' other arguments as to the adequacy of plaintiffs' declarations and find them to be unpersuasive.

[3] During the relevant time period, the federal minimum wage has been $7.25 per hour. 29 U.S.C. § 206(a). As of July 12, 2013, the New York State minimum wage was $7.15 per hour. N.Y. LAB. LAW § 652. It increased to $8.00 on December 31, 2013, $8.75 on December 31, 2014, and $9.00 on December 31, 2015. Id. As of December 31, 2016, the minimum wage rate depends on the location and size of the employer. See id.

Defendants principally argue that plaintiffs have not established the existence of a common unlawful policy because "commissions earned in a given period can be applied to the minimum wage for other periods" and there is no evidence that "when accounting for commissions earned in other pay periods, Plaintiffs were paid less than the applicable minimum wage." (Defs.' Mem. at 4-5 (citing Flick v. Am. Fin. Res., Inc., 907 F. Supp. 2d 274, 278 (E.D.N.Y. 2012)). Plaintiffs have alleged that defendants violated 29 U.S.C. § 206 by failing to pay the applicable minimum wage for all hours worked. They support this allegation with evidence of certain pay periods when they did not receive what amounts to an hourly minimum wage. There is apparently little dispute as to the commonality of defendants' pay practice; instead defendants seek to defeat the instant motion by pointing to the alleged adequacy of total commissions earned during employees' entire employment periods. The court cannot address defendants' contention at this stage, however, as it involves a merits-based determination as to how minimum wages should be calculated, and further requires an opportunity for the parties to exchange discovery and for a full record to be developed. Cf. Karic v. Major Auto. Cos., 799 F. Supp. 2d 219, 224-27 (E.D.N.Y. 2011) (conditionally certifying collective of auto sales representatives based on declarations stating that plaintiffs were paid a flat shift rate of $20, plus commissions, but earned no commissions during certain periods).

Similarly, defendants argue that plaintiffs fail to account for commissions paid directly to them by Nissan Motor Corporation USA pursuant to various sales incentive programs. (See Defs.' Mem. at 5-6.) Defendants have submitted the declaration of defendant John Koufakis Jr. asserting that he believes that plaintiffs have failed to account for these additional wages, which do not appear on the paychecks issued by defendants. (Declaration of John Koufakis Jr., dated Feb. 28, 2017.) Again, the court will not entertain this factual argument at the conditional certification stage without the benefit of a full record. See Indergit v. Rite Aid Corp., Nos. 08 CV 9361, 08 CV 11364, 2010 WL 2465488, at *7 (S.D.N.Y. June 16, 2010) (explaining that defendant's arguments as to the underlying merits will be resolved upon a full record at the decertification stage) (collecting cases); Colon v. Major Perry St. Corp., No. 12 CV 3788, 2013 WL 3328223, at *5 (S.D.N.Y. July 2, 2013) ("Defendants [ ] may not defeat a court's determination that Plaintiffs are similarly situated by submitting their own affidavit.").

Finally, defendants argue that determining whether the commissions earned by plaintiffs were sufficient to satisfy defendants' minimum wage obligation requires an "individual inquiry and analysis." (Defs.' Mem. at 9-10.) I am not persuaded, however, that such an analysis should bar conditional certification in light of the calculations routinely undertaken in wage and hour actions and the remedial nature of the statute. Accordingly, I find it appropriate to conditionally certify this action as a collective action pursuant to 29 U.S.C. § 216(b).

B. Notice Period

"Courts in this circuit have generally held that where willfulness is in dispute, a three year statute of limitations applies at the conditional certification stage." Guzelgurgenli v. Prime Time Specials Inc., 883 F. Supp. 2d 340, 356 (E.D.N.Y. 2012). "[U]nder the FLSA, the notice period generally should be measured from the date of the court's order granting the motion for conditional certification, not from the date that the complaint was filed." Ritz v. Mike Rory Corp., No. 12 CV 367, 2013 WL 1799974, at *3 (E.D.N.Y. Apr. 30, 2013).

On July 21, 2016, the parties to this action executed a pre-litigation tolling agreement which provides that the statute of limitations on plaintiffs' and potential opt-in plaintiffs' FLSA claims shall be tolled from July 12, 2016 until the agreement is terminated. (See Tolling Agreement, dated July 21, 2016, annexed as Ex. H to Fitapelli Decl.) Defendants terminated the agreement on September 15, 2016. (Pls.' Mem. at 8.) Plaintiffs now request that notice be sent to defendants' sales representatives from July 12, 2013 to the present. (Id.) Defendants argue that the notice period should be limited to three years prior to the date of this order or, alternatively, should solely account for the period July 12, 2013 to September 15, 2013, in addition to the three years prior to the date of this order. (See Defs.' Mem. at 11-13.) As there is no argument that the tolling agreement is invalid, I find it appropriate to extend the scope of notice to account for the approximately two-month period when the tolling agreement was in effect. Accordingly, the court authorizes distribution of a notice of collective action and consent to join form to defendants' sales representatives who work or have worked at the Star Nissan dealership during the three years prior to the date of this order, or during the period July 12, 2013 to September 15, 2013.

C. Content of the Notice

'"Upon authorizing the distribution of notice to potential opt-in plaintiffs, the district court maintains broad discretion over the form and content of the notice."' Johnson v. Carlo Lizza & Sons Paving, Inc., 160 F. Supp. 3d 605, 612 (S.D.N.Y. 2016) (quoting Chhab v. Darden Rests., Inc., No. 11 CV 8345, 2013 WL 5308004, at *15 (S.D.N.Y. Sept. 20, 2013)). The first page of plaintiffs' proposed notice states that "[t]he lawsuit claims that the Defendants failed to pay the proper minimum wages, overtime pay and commissions as well as other wages required by law."[4] (Proposed Notice, filed Feb. 14, 2017 ("Notice"), annexed as Ex. I to Fitapelli Decl.) Defendants contend that the notice should not include any reference to claims other than plaintiffs' single FLSA claim for unpaid minimum wages. (See Defs.' Mem. at 13-14.) However, "[c]ourts in this district have typically allowed such language in collective action notices because 'information regarding potential state law claims may be relevant to potential plaintiffs with timely federal claims in deciding whether or not to opt in to the collective action."' Dilonez v. Fox Linen Serv. Inc., 35 F. Supp. 3d 247, 255 (E.D.N.Y. 2014) (quoting Kemper v. Westbury Operating Corp., No. 12 CV 895, 2012 WL 4976122, at *4 (E.D.N.Y. Oct. 17, 2012)); see also Hernandez v. Immortal Rise, Inc., No. 11 CV 4360, 2012 WL 4369746, at *8 (E.D.N.Y. Sept. 24, 2012); Guzman v. VLM, Inc., No. 07 CV 1126, 2007 WL 2994278, at *7 (E.D.N.Y. Oct. 11, 2007); but see Johnson, 160 F. Supp. 3d at 612 ("The Court finds that the proposed notice's references to the NYLL and to plaintiffs' other non-FLSA claims are apt to confuse potential plaintiffs about the nature of this action.") As there is ample support for the inclusion of references to state law wage and hour claims, plaintiffs need not revise the proposed notice to delete such references.

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[4] Plaintiffs' proposed notice includes additional references to state law claims. (See Notice at 2.)

D. Filing of the Consent Forms

Plaintiffs' proposed notice prescribes that consent to join forms shall be returnable to plaintiffs' counsel. (See Notice at 3.) Defendants argue that the consents should be made returnable to the Clerk of the Court. (See Defs.' Mem. at 15.) "Courts within this Circuit have split on whether the consent forms should be returned to the Clerk of the Court or to plaintiff's attorney." See Dilonez, 35 F. Supp. 3d at 257 (citing decisions on both sides of the issue). One concern that arises from consent forms made returnable to plaintiffs' counsel is that opt-in plaintiffs may be implicitly discouraged from selecting other counsel. See id.; Ritz, 2013 WL 1799974, at *4. In order to diminish this concern, the language of the proposed notice must be modified to prominently and unambiguously advise potential opt-in plaintiffs that they have the option to retain plaintiffs' counsel, but can select any counsel of their choosing.[5] See Dilonez, 35 F. Supp. 3d at 257; Mata-Primitivo v. May Tong Trading Inc., No. 13 CV 2839, 2014 WL 2002884, at *6 (E.D.N.Y. May 15, 2014); Ritz, 2013 WL 1799974, at *4.

E. Distribution of the Notice

Plaintiffs request that the notice and consent to join form be sent via (1) first-class U.S. mail, (2) email, and (3) text message. (See Pls.' Mem. at 9.) Defendants argue that distribution should be limited to first-class mail.[6] (See Defs.' Mem. at 17.) However, "[c]ourts in this Circuit routinely approve email distribution of notice and consent forms in FLSA cases." Martin v. Sprint/united Mgmt. Co., No. 15 CV 5237, 2016 WL 30334, at *19 (S.D.N.Y. Jan. 4, 2016); see, e.g., Pippins v. KPMG LLP, No. 11 CV 377, 2012 WL 19379, at *14 (S.D.N.Y. Jan. 3, 2012) ("[G]iven the reality of communications today, [ ] the provision of email addresses and email notice in addition to notice by first class mail is entirely appropriate."). "Courts have also permitted text message distribution where . . . the nature of the employer's business facilitated a high turnover rate among employees." Martin, 2016 WL 30334, at *19; see also Bhumithanarn v. 22 Noodle Mkt. Corp., No. 14 CV 2625, 2015 WL 4240985, at *5 (S.D.N.Y. July 13, 2015). As plaintiffs make no argument that there is a high turnover rate among automobile sales representatives, the court authorizes distribution of the notice via email and first-class mail, but not via text message.

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[5] The proposed consent to join form requires potential opt-in plaintiffs to acknowledge that they "may choose [their] own counsel," but the court agrees with defendants' contention that the proposed notice does not clearly explain this right. (See Notice at 5.) In accordance with this finding, the parties are directed to meet and confer within seven (7) days to reach an agreement as to defendants' proposed line revisions. (See Defs.' Mem. at 15-16.) The parties shall promptly thereafter either submit an agreed upon revised notice or bring any unresolved issues to the court's attention.

[6] Contrary to defendants' contention, plaintiffs have not requested that notice be posted at defendants' business location. (See Defs.' Mem. at 17-18; Reply at 9.)

F. Reminder Notice

Plaintiffs seek authorization for distribution of a proposed reminder notice alerting potential opt-in plaintiffs that the 60-day opt-in period deadline is approaching. (Pls.' Mem. at 10; see Proposed Reminder Notice, filed Feb. 14, 2017, annexed as Ex. J to Fitapelli Decl.) Defendants oppose the request as "another bite at the apple" and as implicit court endorsement of the action or badgering of prospective plaintiffs. (See Defs.' Mem. at 18-19.) There is some mixed authority in this circuit regarding the issuance of reminder notices in FLSA cases. See Chhab, 2013 WL 5308004, at *16; Guzelgurgenli, 883 F. Supp. 2d at 357-58. As the proposed reminder notice indicates in all capital letters that "the court has taken no position in this case regarding the merits of the plaintiff's claims or of the defendants' defenses," I find that issuance of the reminder notice is appropriate in light of the broad remedial purpose of the statute. See Bijoux v. Amerigroup N.Y., LLC, No. 14 CV 3891, 2015 WL 4505835, at *15 (E.D.N.Y. July 23, 2015), report and recommendation adopted, 2015 WL 5444944 (E.D.N.Y. Sept. 15, 2015); Chhab, 2013 WL 5308004, at *16; Morris v. Lettire Constr., Corp., 896 F. Supp. 2d 265, 275 (S.D.N.Y. 2012).

G. Equitable Tolling

Plaintiffs have requested that the statute of limitations be tolled from the date of the filing of the instant motion until such time as they are able to send notice to potential opt-in plaintiffs. (See Pls.' Mem. at 12-13.) "Equitable tolling is appropriate 'only in rare and exceptional circumstances, where a plaintiff has been prevented in some extraordinary way from exercising his rights."' Garcia v. Chipotle Mexican Grill, Inc., No. 16 CV 601, 2016 WL 6561302, at *10 (S.D.N.Y. Nov. 4, 2016) (quoting Vasto v. Credico (USA) LLC, No. 15 CV 9298, 2016 WL 2658172, at *16 (S.D.N.Y. May 5, 2016)). Plaintiffs have not presented any such "rare and exceptional circumstances" here. Accordingly, plaintiffs' request is denied at this time.

H. Production of Contact Information

Plaintiffs request production of a computer-readable list of the names, last known addresses, alternate addresses, social security numbers, telephone numbers, e-mail addresses, work locations and dates of employment for all persons employed by defendants as sales representatives at the Star Nissan dealership. (Pls.' Mem. at 11-12.) Defendants object to producing telephone numbers and personal e-mail addresses for potential plaintiffs. (Defs.' Mem. at 16.) "Numerous courts have found that discovery of employees' basic contact information is appropriate at this stage." Mohamed v. Sophie's Cuban Cuisine Inc., No. 14 CV 3099, 2015 WL 5563206, at *5 (S.D.N.Y. Sept. 21, 2015). "[D]ue to privacy concerns, the courts in this circuit are split over the propriety of requiring defendants to produce telephone numbers." Hernandez, 2012 WL 4369746, at *9 (collecting cases). Nevertheless, "[c]ourts routinely order discovery of names, addresses, email addresses, and telephone numbers in FLSA actions." Ritz, 2013 WL 1799974, at *5; see also Hernandez, 2012 WL 4369746, at *9; Ack v. Manhattan Beer Distribs., Inc., No. 11 CV 5582, 2012 WL 1710985, at *6 (E.D.N.Y. May 15, 2012). Accordingly, within fourteen (14) days, defendants shall produce the requested contact information, excepting social security numbers as discussed below, for all persons employed by defendants as sales representatives at the Star Nissan dealership during the three years prior to the date of this order, or during the period July 12, 2013 to September 15, 2013.

With regard to plaintiffs' request for social security numbers, "'while courts often decline to allow discovery of social security numbers due to privacy concerns, it is generally accepted that such discovery is permitted where plaintiff can demonstrate that names and contact information are insufficient to effectuate notice.'" Ritz, 2013 WL 1799974, at *5 (quoting Whitehorn v. Wolfgang's Steakhouse, Inc., 767 F. Supp. 2d 445, 448 (S.D.N.Y. 2011)) (internal brackets omitted). Plaintiffs state that they will request social security numbers only for those individuals whose notices and consent forms are returned as undeliverable. (See Pls.' Mem. at 12.) In that event, plaintiffs' counsel shall provide defendants' counsel with a copy of the notice of undeliverability and defendants' counsel shall provide forthwith the social security numbers of each individual who could not be located. If necessary, plaintiffs' counsel may request that the opt-in period for such individuals be extended forty-five (45) days from the date of receipt of the individual's social security number.

In light of the privacy concerns at issue, plaintiffs shall file a fully executed confidentiality agreement regarding the use of social security numbers within seven (7) days of the date of this order. See Shajan v. Barolo, Ltd., No. 10 CV 1385, 2010 WL 2218095, at *1 (S.D.N.Y. June 2, 2010). The agreement shall state that the numbers will be maintained by counsel alone and used solely to perform public records searches to locate and provide notice to prospective members; that all copies of the numbers, including any program or other document created using the numbers, will be destroyed once the searches are complete; and that counsel will certify, in writing, that the terms of this order have been adhered to once the destruction of this data is complete. See Whitehorn, 767 F.Supp.2d at 448–49 (citing Shajan, 2010 WL 2218095, at *1)).

CONCLUSION

For the reasons explained above, plaintiffs' motion is granted, subject to the limitations contained herein.

SO ORDERED.

Dated: Brooklyn, New York
April 12, 2017

/s/
ROBERT M. LEVY
United States Magistrate Judge